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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

DARSHANA NADKARNI, Defendant and Appellant, v. DATTAPRASANNA NADKARNI, Plaintiff and Respondent.	H034029 (Santa Clara County Super. Ct. No. 1-08-CV111519)

Plaintiff Dattaprasanna Nadkarni sued defendant Darshana Nadkarni for slander arising from defendant's statements to plaintiff's employer that caused the employer to terminate plaintiff. Defendant filed a special motion to strike under Code of Civil Procedure section 425.16,[1] commonly known as the anti-SLAPP statute.[2] The trial court denied the motion, and defendant appeals.[3] Defendant contends that her communication is protected by section 425.16, subdivision (e)(2), because it was made in connection with an issue under consideration by a judicial body. We disagree and affirm the order.

[1] Further unspecified statutory references are to the Code of Civil Procedure.

[2] The acronym "SLAPP" stands for " 'strategic lawsuits against public participation.' " (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 85 (*Navellier*).)

[3] "An order granting or denying a special motion to strike shall be appealable under Section 904.1." (§ 425.16, subd. (i).)

LEGAL BACKGROUND

The anti-SLAPP statute provides a "procedural remedy to dispose of lawsuits that are brought to chill the valid exercise of constitutional rights." (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1055-1056.) In evaluating an anti-SLAPP motion, the trial court must engage in a two-step process. (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67 (*Equilon*).) It first determines "whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity." (*Navellier, supra*, 29 Cal.4th at p. 88.) A defendant meets this burden by demonstrating that plaintiff's action is premised on statements or conduct taken " 'in furtherance of the [defendant]'s right of petition or free speech under the United States [Constitution] or [the] California Constitution in connection with a public issue,' as defined in the [anti-SLAPP] statute. (§ 425.16, subd. (b)(1).)" (*Equilon, supra,* at p. 67.) If the defendant makes the requisite showing, the burden shifts to the plaintiff to demonstrate a probability of prevailing on the claim. (*Ibid.*)

We review the trial court's decision de novo. (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 325.) In so doing, we consider "the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based." (§ 425.16, subd. (b)(2).)

"A defendant who files a special motion to strike bears the initial burden of demonstrating that the challenged cause of action arises from protected activity." (*Peregrine Funding, Inc. v. Sheppard Mullin Richter & Hampton LLP* (2005) 133 Cal.App.4th 658, 669.) Our Supreme Court has noted this requirement is not always easily met. (*Equilon, supra,* 29 Cal.4th at p. 66.) "A claim does not arise from constitutionally protected activity simply because it is triggered by such activity or is filed after it occurs." (*World Financial Group, Inc. v. HBW Ins. & Financial Services, Inc.* (2009) 172 Cal.App.4th 1561, 1568.) Rather, "the critical point is whether the

plaintiff's cause of action itself was *based on* an act in furtherance of the defendant's right of petition or free speech." (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 78.)

A moving defendant satisfies his or her burden by showing that the conduct or statement forming the basis of the plaintiff's claim falls within one of the four categories of protected activity set forth in section 425.16, subdivision (e). (*Equilon, supra*, 29 Cal.4th at p. 66.) That provision states: "As used in this section, 'act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue' includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law; (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law; (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest; (4) or any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest." (§ 425.16, subd. (e).)

THE PLEADINGS AND MOTION TO STRIKE

Plaintiff and defendant were married for approximately 20 years and have two minor children. Defendant filed a marital dissolution action in 2002, and the family court rendered a final judgment in 2005. But support, custody, and attorney fee issues continued to be litigated until 2008. And other disputes between the two are extant in the family court, probate court, and United States District Court.[4]

The first amended complaint alleges that (1) in 2004, defendant told the executives of plaintiff's employer that plaintiff had pleaded guilty in 2000 to crimes involving

[4] Family law cases can sometimes "resemble an unruly desert caravan strung out upon the sands." (*In re Marriage of Schaffer* (1999) 69 Cal.App.4th 801, 808.)

domestic violence against her that occurred in 1999, (2) the statement was false because plaintiff had pleaded nolo contendre and the conviction had been set aside in 2001 pursuant to the provisions of Penal Code section 1203.4, and (3) plaintiff's employer terminated him because of defendant's statement.

Defendant supported her motion to strike with declarations to the effect that plaintiff had sought spousal support in the dissolution action. According to defendant's papers, plaintiff's conviction was an issue in the dissolution action because, under Family Code sections 4320, subdivision (i), and 4325, subdivision (a), documented evidence of a history of domestic violence between the parties is a circumstance that the court must consider in ordering spousal support and there is a rebuttable presumption against making any award to a spouse who has been convicted of domestic violence within five years. The papers also asserted that child custody was a potential issue in the dissolution action and, under Family Code section 3044, subdivision (a), there is a rebuttable presumption that an award of child custody to a spouse who has perpetrated domestic violence within five years is detrimental to the best interest of the child.

The trial court found as follows: "Defendant failed to satisfy her initial burden as moving party of establishing that the defamation action arises out of protected activity. More particularly, defendant failed to show that the alleged defamatory statements were made in connection with an issue under consideration or review in a judicial or other official proceeding."

DISCUSSION

As mentioned, defendant contends that her statement to plaintiff's employer is protected activity under section 425.16, subdivision (e)(2). She specifies: "The alleged statement that [plaintiff] pled [*sic*] guilty to domestic violence was related to one of the hotly-contested issues in the dissolution action--spousal support." Defendant's analysis is erroneous.

Section 425.16, subdivision (e)(2) "does not accord anti-SLAPP protection to suits arising from any act having any connection, however remote, with an official proceeding." (*Paul v. Friedman* (2002) 95 Cal.App.4th 853, 866.) Although "we are required to construe the [anti-SLAPP] statute broadly" (*id.* at p. 864), "it is insufficient to assert that the acts alleged were 'in connection with' an official proceeding. There must be a connection with an issue under review in that proceeding." (*Id.* at p. 867.)

In *Contemporary Services Corp. v. Staff Pro Inc.* (2007) 152 Cal.App.4th 1043 (*CSC*), CSC and Staff Pro were competitors in the business of providing event staffing services. During litigation between them, the president of Staff Pro, Cory Meredith, sent an e-mail to nine of Staff Pro's clients in which he discussed the litigation and stated that CSC paid former Staff Pro employees " 'to make false statements in declarations [which] . . . were then presented to Staff Pro's clients in an effort to create doubt in Staff Pro's clients' minds.' " (*Id.* at p. 1050.) Meredith stated that the purpose of the e-mail was to explain the nature of a pending lawsuit to the recipients, " 'to inform them of the status of this case and the recent court rulings, to give them some idea as to how their testimony and production of documents . . . had been used, to give these persons some level of comfort that it was unlikely any further testimony would be needed from them . . . and, lastly, to apologize for any disruption to their business that occurred as a result of being "dragged into" the [litigation] because of their connection to Staff Pro.' " (*Ibid.*) CSC then filed another action against Staff Pro and Meredith alleging, inter alia, defamation based on Meredith's statements in the e-mail. The trial court granted Staff Pro and Meredith's special motion to strike under the anti-SLAPP statute. The Court of Appeal affirmed, finding that the e-mail fell within the parameters of section 425.16, subdivision (e)(2), because it constituted a litigation update that described the parties' contentions and court rulings, and was directed to individuals who had some involvement in that litigation.

In *Neville v. Chudacoff* (2008) 160 Cal.App.4th 1255 (*Neville*), Maxsecurity, Inc., fired Neville amid allegations that he had misappropriated Maxsecurity's customer lists and secretly solicited its customers to start a competing business. Gregory Chudacoff, Maxsecurity's attorney, sent a letter to Maxsecurity's customers accusing Neville of breach of contract and misappropriation of trade secrets, and suggesting to the customers they should not do business with Neville to avoid involvement in litigation. Several months later, Maxsecurity sued Neville for breach of contract and misappropriation of trade secrets. Neville countered with a cross-complaint against Maxsecurity and Chudacoff alleging, inter alia, defamation. Chudacoff filed an anti-SLAPP motion that was granted. The Court of Appeal affirmed, finding that the letter related directly to Maxsecurity's claims that Neville had misappropriated the customer lists and was directed to Maxsecurity's current and former customers--persons who could have "an interest in the dispute as potential witnesses to, or unwitting participants in, Neville's alleged misconduct." (*Id.* at pp. 1267-1268.) It added that the letter also was an attempt to prevent further misuse of Maxsecurity's proprietary information and thereby mitigate damages.

CSC and *Neville* cite *Healy v. Tuscany Hills Landscape & Recreation Corp.* (2006) 137 Cal.App.4th 1 (*Healy*). In *Healy*, a homeowners association filed an action against a homeowner, alleging that the homeowner had wrongfully denied the association access across her property for weed abatement to reduce a fire hazard. The association then sent a letter to residents of the development discussing the litigation and stating that the weed abatement had become more costly to the association because ingress and egress to the property was being prohibited by the homeowner. The homeowner filed a cross-complaint alleging that the letter defamed her by falsely communicating to other residents that she was responsible for causing the association to incur additional costs. The association then moved to strike the defamation cause of action under the anti-SLAPP statute, and the trial court denied the motion. The Court of Appeal reversed,

finding that the letter was protected because one of its purposes was to inform association members of pending litigation involving the association.

In *Taheri Law Group v. Evans* (2008) 160 Cal.App.4th 482 (*Taheri*), a law firm sued Neil C. Evans, an attorney, asserting causes of action for intentional interference with prospective economic advantage and intentional interference with business relations. (*Id.* at p. 485.) The law firm alleged that (1) it had successfully represented a client, Alexander Sorokurs, for 18 months when, " 'without warning and for cause unknown,' " the client discharged the firm while still owing it more than $500,000 in fees (*ibid.*), (2) on the same day, the firm received a letter from Evans saying that he was Sorokurs's new counsel in the matters in which the firm had been representing Sorokurs, (3) Evans knew of the economic relationship between the firm and Sorokurs, and (4) Evans induced Sorokurs to terminate his relationship with the firm by promising " 'unobtainable and ethically improper litigation objectives,' " including the promise that Evans would be able to enforce a settlement agreement to which Sorokurs was a party (*id.* at pp. 485-486). Evans brought an anti-SLAPP motion, arguing that his actions were protected because they took place in connection with pending litigation in which the firm's interests were allegedly interfered with by Evans's filings, letters, and other communicative actions. The Court of Appeal agreed, finding that the causes of action arose from Evans's communications regarding pending litigation to a party to that litigation, Sorokurs, and from Evans's conduct in enforcing the settlement agreement on Sorokurs's behalf.

In sum, *CSC*, *Neville*, *Healy*, and *Taheri* stand for the proposition "that a statement is 'in connection with' litigation under section 425.16, subdivision (e)(2) if it relates to the substantive issues in [pending or contemplated] litigation and is directed to persons having some interest in the litigation." (*Neville*, *supra*, 160 Cal.App.4th at p. 1266.)

Here, plaintiff's slander cause of action arises from defendant's statement to plaintiff's employer that plaintiff was convicted of domestic violence. But there is no

evidence that defendant made any reference to the marital dissolution proceeding or made the statement for a reason related to the marital dissolution proceeding. Thus, rather than being a litigation update or critique (as were the communications analyzed in *CSC*, *Neville*, *Healy*, and *Taheri*), defendant's statement was facially unconnected to the marital dissolution proceeding. To the extent that plaintiff's conviction was raised in the marital dissolution proceeding, it was as an ancillary evidentiary issue given that the substantive issue was spousal support. Thus, defendant's statement was, at most, coincidentally related to a matter in evidence in the marital dissolution proceeding. In short, defendant's statement had too little, if any, connection with the matter actually at issue in the marital dissolution proceeding.

Equally important is that defendant fails to explain what possible interest plaintiff's employer could have in plaintiff's marital dissolution proceeding. Thus, rather than being a communication to persons having some interest in the litigation (as were the communications analyzed in *CSC*, *Neville*, *Healy*, and *Taheri*), defendant's statement was made to an uninterested third party. Defendant attempts to explain by pointing out that plaintiff's employer "had an 'interest' in his domestic violence conviction; otherwise, it would not have been the alleged reason for terminating him." But she overlooks that having an interest in plaintiff's conviction is not the same as having some interest in plaintiff's martial dissolution proceeding. She cites cases without analysis for the general proposition that statements made to the general public are protected even though not every person was interested. But each of those cases involves public statements on a matter of public interest. (*Annette F. v. Sharon S.* (2004) 119 Cal.App.4th 1146 [domestic violence allegations to gay-lesbian organization and newspaper by party to highly controversial published decision on second-parent adoptions that received widespread coverage in the media and on the Internet while former partner's adoption petition was pending and similar writ petitions were pending in appellate courts]; *Braun v. Chronicle Publishing Co.* (1997) 52 Cal.App.4th 1036 [news reports stemming from

allegations of illegal and improper management of University of California pre-hospital research and training center]; *Lafayette Morehouse, Inc. v. Chronicle Publishing Co.* (1995) 37 Cal.App.4th 855 [news reports stemming from a dispute between university and neighbors on university's decision to open its property to the homeless].)

We therefore conclude that defendant failed to make out a prima facie case showing that the alleged slander arose from her free speech or petition activity. The trial court therefore correctly denied defendant's motion to dismiss plaintiff's complaint.

DISPOSITION

The order regarding special motion to strike the first amended complaint is affirmed.

Premo, Acting P.J.

WE CONCUR:

Elia, J.

McAdams, J.